

NOTICE OF PROPOSED REGULATORY ACTION

TITLE 2. ADMINISTRATION DIVISION 3. STATE PROPERTY OPERATIONS CHAPTER 1. STATE LANDS COMMISSION ARTICLE 4.7. REGULATIONS ESTABLISHING PERFORMANCE STANDARDS FOR THE DISCHARGE OF BALLAST WATER FOR VESSELS OPERATING IN CALIFORNIA WATERS

The California State Lands Commission (the Commission) proposes to adopt the regulations described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commission proposes to adopt Section 2291, 2292, 2293, 2294, 2295, and 2286 under new Article 4.7 in Title 2, Division 3, Chapter 1 of the California Code of Regulations (C.C.R.). These sections would create regulations establishing performance standards for the discharge of ballast water for vessels operating in California waters.

PUBLIC HEARING

The Commission Staff will hold a public hearing beginning at 10:00 a.m. on June 6, 2007 at the Elihu M. Harris State Building, 1515 Clay Street, First Floor Auditorium, Oakland, CA 94612. This location is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing, relevant to the proposed regulatory action described in the Informative Digest. The Commission requests, but does not require, that persons who make oral comments at the hearings also submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at 5:00 p.m. on June 6, 2007. All written comments must be received at the Commission, by that time. Written comments should be submitted to:

Ravi Varma
Supervisor, Planning Branch
California State Lands Commission
Marine Facilities Division
200 Oceangate, Suite 900
Long Beach, CA 90802-4246

AUTHORITY AND REFERENCE

P.R.C. Section 71201(d) describes the State program to regulate discharges of ballast water in order to limit the introduction of nonindigenous species. In enforcing the provisions of the Act, the Commission is authorized to adopt the proposed regulations, which would implement, interpret and make specific P.R.C. Section 71205.3.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

P.R.C. Section 71205.3, which became effective January 1, 2007, requires the Commission to adopt regulations governing interim and final performance standards for the discharge of ballast water in accordance with Tables X-1 and X-2 of the California State Lands Commission Report on Performance Standards for Ballast Water Discharges in California Waters, as approved by the Commission on January 26, 2006.

Accordingly, the proposed regulation would implement and make specific the performance standards for the discharge of ballast water under P.R.C. Section 71205.3. Without the regulations, the purpose of the Act as described in P.R.C. Section 71201(d) cannot be achieved.

Section 2291 would state the purpose of the regulation.

Section 2291(b) would specify the vessels to which these regulations apply.

Section 2291(c) would identify the date of implementation of the regulation.

Section 2292 would narrowly define several key terms that are used throughout the language of the regulation to describe management requirements and regulation applicability. These definitions ensure that the performance standards for the discharge of ballast water are clear to the shipping industry and compliance occurs as intended by the regulation.

Section 2293 would prescribe interim performance standards for the discharge of ballast water that have been deemed the most biologically effective and economically feasible actions moving the state expeditiously toward the elimination of the discharge of nonindigenous species into the waters of the state.

Section 2294 would describe the implementation schedule for interim performance standards for ballast water discharges.

Section 2295 would describe the implementation schedule for the final performance standards for ballast water discharges.

Section 2296 would describe the conditions under which an owner or operator of a vessel could delay the application of the interim performance standards for ballast water discharges.

DIFFERENCES FROM FEDERAL REGULATIONS

Recognizing the severity of the invasive species problem, the federal government implemented a mandatory national ballast water management and reporting program in September 2004 for vessels entering the United States. However, this mandatory program does not include performance standards for the discharge of ballast water. The transport of ballast water in marine vessels is recognized as a major mechanism by which aquatic nonindigenous invasive species (NIS) are spread. Current California law requires that vessels manage ballast water to reduce the discharge of nonindigenous species into California waters.

There are currently no performance standards for the discharge of ballast water for vessels that operate in California waters, even though research has shown that there is a significant threat for such voyages to facilitate the establishment and spread of NIS throughout the region.

The performance standards for the discharge of ballast water prescribed by these proposed regulations are necessary to minimize the transport of NIS into and throughout the waters of the State of California.

PLAIN ENGLISH DETERMINATION AND OVERVIEW

Small Business Determination

The Commission has determined that these regulations do not affect small businesses as defined in Government Code (Gov. C.) Section 11342.610 because all affected businesses are commercial maritime transport owners and operators, as specified under Gov. C. Section 11342.610(c)(7) and having annual gross receipts of more than \$1,500,000.

Plain English Policy Overview

The proposed regulations have been drafted in a plain and straightforward manner and do not contain technical terms that require a plain English policy overview.

ESTIMATED COSTS TO THE STATE

No costs to the State would be incurred in implementing and enforcing these proposed regulations. The programs mandated by the Act are funded

exclusively by the Marine Invasive Species Control Fund through fees collected from the owners of vessels subject to the Act.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None.

Costs or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Part 7 (commencing with section 17500) of Division 4 of the Government Code: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Costs or savings in federal funding to the state: None.

Cost impact on private persons or directly affected businesses: Limited information is available from ballast water treatment technology developers and members of the regulated community. The few studies available provide a glimpse at the potential cost of implementing treatment technology alternatives to ballast water exchange, but only reflect costs associated with research and development. Cost information for a subset of treatment technologies that have been installed onboard operational vessels range from \$150,000 to \$525,000 per vessel (these costs are for equipment and installation and does not include operation costs). These costs are only representative of technologies installed under research and development conditions and are expected to decrease as the technologies become commercially available.

Since year 2000, over 6000 different vessels have operated in state waters. While vessels constructed on or after 2009 will be required to meet the interim standards in 2009, existing vessels will have seven to nine years before they must meet the interim standards.

Creation or elimination of jobs within the State of California: The Commission has determined that the proposed regulations will not have a significant impact on the creation or elimination of jobs within the State of California.

Creation of new businesses or the elimination of existing businesses within the State of California: The Commission has determined that the proposed regulations will not have a significant impact on the creation or elimination of businesses within the State of California.

Expansion of businesses currently doing business within the State of California: The Commission has determined that the proposed regulations would not have a

significant impact upon expansion of businesses currently doing business within the State of California.

The Commission has made an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Gov. C. Section 11346.5, sub. (a)(13), the Commission must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the Commission's attention, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned hearings or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Maurya B. Falkner
Environmental Program Manager I
State Lands Commission
Marine Facilities Division
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202
Telephone: (916) 574-2568

Or to: Mark A. Meier
Senior Staff Counsel
State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-1853

Requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be directed to:

Ravi Varma
Supervisor, Planning Branch
State Lands Commission
Marine Facilities Division
200 Oceangate, Suite 900
Long Beach, CA 90802-4246
Telephone: (562) 499-6400

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at either of the above addresses. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Ravi Varma at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the hearing and considering all timely and relevant comments received, the Commission may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the Commission adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Ravi Varma at the address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ravi Varma at the address or telephone number listed above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations, can be accessed through the Commission's website at:
http://www.slc.ca.gov/Division_Pages/MFD/MFD_Programs/Ballast_Water/Ballast_Water_Default.htm